

STATE OF MICHIGAN
COURT OF APPEALS

JAMIE LYNN KIENITZ,

Plaintiff-Appellant,

and

PAUL EDWARD KIENITZ and CHRISTOPHER
MICHAEL BURGDORF,

Plaintiffs,

v

RICHARD KRAE DAVIDSON and DEBORAH
ANN ROBERTS,

Defendants-Appellees.

UNPUBLISHED
December 20, 2002

No. 231425
Tuscola Circuit Court
LC No. 98-016777-NI

JAMIE LYNN KIENITZ,

Plaintiff-Appellant,

V

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

No. 231461
Tuscola Circuit Court
LC No. 00-018612-NF

Before: Fitzgerald, P.J., and Holbrook, Jr., and Griffin, JJ.

GRIFFIN, J. (*dissenting*).

I respectfully dissent.

In granting summary disposition in favor of defendants in Docket No. 231425, the Honorable Carl L. Horn ruled:

The Court: . . . I'll adopt the last paragraph of Mr. Diesel's brief on page five. I'm going to read it into the record.

"This case is actually rather simple. The policy that Jamie Lynn Kienitz had with Farmers Insurance Exchange expired on January 29th, 1998. Jamie Lynn Kienitz did not renew the policy. Whether her failure to renew it was based on her failures, her understanding that somebody should have sent her something, or some other explanation is irrelevant. The simple fact of the matter is Michigan law recognizes that at the time her policy expires she was uninsured. On February 28th, 1998, she was uninsured. The law indicates she's not entitled to maintain this cause of action."

So, I'm adopting that as my reason for my ruling, and that's the finding of the Court.

Mr. Fordyce (counsel for plaintiff): Your Honor, could I request additional findings, fairly certain this case won't end here.

I would like to know whether the Court has found that what happneed [sic] was a non-renewal, or a cancellation of the policy?

The Court: I find it's a non-renewal.

Based on the facts that plaintiff admits are not in dispute, the lower court correctly held that a policy of automobile insurance was not in effect at the time of the accident because of non-renewal.¹ *McCormic v Auto Club Ins Assn*, 202 Mich App 233; 507 NW2d 741 (1993).

As acknowledged by the majority, plaintiff's contract of insurance with defendant Farmers Insurance Exchange expired by its own terms on January 29, 1998. While an offer was made to renew the policy for a six-month term expiring on July 29, 1998, plaintiff never made a policy premium payment for the renewal policy and thus failed to accept defendant's offer to renew. *Id.* Even if, as stated by the majority, "[t]here are some indications in the record that could lead to the conclusion that the first renewal payment would have been due on February 28, 1998, i.e., the day of the accident," it is undisputed that plaintiff failed to make a premium payment on February 28, 1998, or at *anytime*.

Because the material facts are not in dispute, I respectfully dissent from the futile remand for further proceedings. I would affirm.

/s/ Richard Allen Griffin

¹ Subsequently, in Docket No. 231461, the Honorable Patrick R. Joslyn granted summary disposition in favor of defendant on the basis of Judge Horn's prior ruling of no coverage because of non-renewal.